

# VIRGINIA CODE COMMISSION

*Wednesday, November 17, 2010 – 10:00 a.m.*

*General Assembly Building, 6th Floor*

*Speaker's Conference Room*

*Richmond, Virginia 23219*

**MEMBERS PRESENT:** John S. Edwards; Bill Janis; Jim LeMunyon; Ryan McDougale, Jane M. Roush; Robert L. Calhoun; Thomas M. Moncure, Jr.; Frank Ferguson; E.M. Miller, Jr.

**MEMBERS ABSENT:** Patricia West

**OTHERS PRESENT:** Brian Kennedy, LexisNexis; Chris Nolen, Chair, Administrative Law Advisory Committee

**STAFF PRESENT:** David Cotter, Jane Chaffin, Jessica Eades

## **Call to Order; Minutes**

Senator Edwards called the meeting to order at 10:10 a.m. The Commission approved the minutes of the October 6, 2010, meeting with an amendment to show Senator Calhoun as absent.

## **Administrative Law Advisory Committee**

Chris Nolen, Chair of the Administrative Law Advisory Committee (ALAC), reported ALAC's recommendations resulting from a study by the Regulatory Flexibility for Small Business work group. The work group was charged with evaluating the implementation of legislation passed by the General Assembly in 2005 concerning regulatory flexibility for small business and periodic review of regulations. The work group noted that, although the regulatory flexibility for small business component has been implemented through the routine economic impact analysis and executive review process, it is difficult to determine whether agencies have complied with the review provisions of § 2.2-4007.1 D and E. This is partly because the legislation is not prescriptive in demonstrating compliance and partly because of potential confusion between the statutory requirements for periodic review and the requirements for periodic review set forth in the Governor's executive order.

Mr. Nolen presented ALAC's proposed legislation to the Commission members for consideration. The legislation (i) changes the periodic review requirement from five years to four years to conform to the issuance of an executive order every four years, (ii) adds a requirement to publish a notice of the review and report of the findings in the *Virginia Register of Regulations* and on the Virginia Regulatory Town Hall, and (iii) provides for a 21-day public comment period after publication of the notice. Mr. Miller noted that the Virginia Regulatory Town Hall is established by executive order, but not defined in statute. He suggested adding a definition of the Virginia Regulatory Town Hall in the Administrative Process Act. The Commission approved the proposed legislation with the amendment suggested by Mr. Miller.

In addition, ALAC suggests sending a memorandum to regulatory agencies that explains the periodic review requirement and provides guidance to assist agencies in complying with the statutory requirements. The Commission agreed with disseminating this information to agencies and discussed whether the memorandum should come from ALAC or the Code Commission.

The Commission approved sending the information to agencies from the Chairman of the Code Commission, with a notation to contact ALAC with questions.

### **2011 Code of Virginia Pricing and Replacement Volumes Proposal**

Brian Kennedy, Associate Director for Government Content Acquisition, LexisNexis, presented the Code of Virginia proposed replacement volume options and pricing proposal for the 2011 Code of Virginia replacement volumes and supplements. The proposed pricing table sets out three pricing options based on the replacement of four, five, and six volumes, respectively.

Mr. Miller stated that staff had reviewed the proposal and suggests splitting volumes 5 and 5A into three volumes and replacing Volume 1 for a total of four volumes. The Commission discussed the proposal and noted that the supplement price decreases with each additional volume replaced, so the final price for six volumes as opposed to four volumes differed by only \$48 (state) and \$49.50 (private).

The Commission voted to replace five volumes and add one volume for a total of six volumes as follows:

- Replace:
  - Volume 1, consisting of Titles 1 and 2.2
  - Volume 3, consisting of Titles 11 through 13.1
  - Volume 6, consisting of Titles 33.1 through 37.2
- Split Volumes 5 and 5A into three volumes:
  - Volume 5 will consist of Titles 22.1 and 23
  - Volume 5A will consist of Titles 24.2 through 28.2
  - Volume 5B will consist of Titles 29.1 through 32.1

The Commission approved LexisNexis' proposed prices with six replacement volumes as follows:

	2011 Prices with Six Replacement Volumes	
	State	Private
Cumulative Supplements	\$136.50	\$178.50
Index	\$ 71.50	\$ 76.50
Replacement Volumes 1, 3, 6, 5, & 5A; Add Volume 5B	\$231.00 (\$38.50 each)	\$291.00 (\$48.50 each)
Volume 11	\$ 29.50	\$ 38.50
Volume 11 Supplement	\$ 9.50	\$ 9.50
Advanced Code Service		\$ 55.50
TOTAL	\$478.00	\$649.50

### **Suggested Technical Rewrite of Barrier Crimes Provisions in Titles 37.2 and 63.2**

At the October meeting, Jess Eades reported problems with the barrier crimes language in Titles 37.2 and 63.2 of the Code of Virginia. Subsequent to Ms. Eades' report, Senator Edwards asked her to draft technical amendments to clarify the language for the Commission's consideration.

Ms. Eades presented a draft, which removes the descriptions of and article citations to the barrier crimes, and instead cites specific code sections, which are inclusive of all sections contained within the article citations. The members debated whether certain crimes, although embedded in the article references of the existing language, were actually intended to be barrier crimes and concluded that the amendments could be considered substantive.

The Commission voted to send a letter from Senator Edwards to the House and Senate Courts Committee chairs explaining the issue and asking for a joint subcommittee to review the matter during the 2011 interim.

#### **Recodification of Title 64.1, Wills and Decedents' Estates**

David Cotter, Attorney, Division of Legislative Services, reported on the recodification of Title 64.1, Wills and Decedents' Estates. The Code Commission continued its review of Chapter 3 (Wills) of Title 64.2 from the last meeting, beginning with Article 5 (Probate). In addition, the Commission completed its review of proposed Chapter 5 (Transfers without Qualification) and Subtitle II (Trusts).

The final recodification report is expected to be issued next fall, and associated legislation is expected to be introduced at the 2012 General Assembly session.

#### **Budget Item**

At the October meeting, Mr. Miller requested an allocation of \$30,000 from the Code Commission special funds to be used to upgrade the Division's 20-year-old telephone system. In response to a concern raised about whether the Commission could allocate these funds, Mr. Miller explored the issue following the October meeting and concludes no legal or constitutional barriers exist. Mr. Miller further explained that the special funds are derived from fees paid by noncontract publishers since 2001 for secure access to and participation in the web-based forum used for discussion between the Code Commission Executive Committee and contract publisher relating to codification of the Acts of Assembly each year. LexisNexis is the contract publisher and, currently, West is the only participant. These funds were initially earmarked for development and maintenance of the Code Commission's electronic regulation filing system. However, to date, Code Commission staff and Division of Legislative Automated Systems staff have been able to create and enhance the system at minimal cost, thereby avoiding use of the special funds. A portion of the funds continues to be set aside for system maintenance and upgrades that will be required in future years and is budgeted as part of the Commission's long-term budget plan.

The Virginia Code Commission approved a transfer of \$30,000 (\$24,000 from the current budget and \$6,000 from next year's budget) of the special funds to the Division for the purchase of an upgraded telephone/telecommunications system.

#### **Other Business; Public Comment; Adjourn**

The chair opened the floor for public comment. As there was no public comment and no further business to be discussed, the meeting adjourned at 12:40 p.m.